

REMARKS

The Official Action of June 15, 2004, and the prior art relied upon therein have been carefully reviewed. The claims in the application are now claims 3-6, 13, 14 and 17-29, and these claims define patentable subject matter warranting their allowance. Accordingly, the applicants respectfully request favorable reconsideration and allowance.

Acknowledgement by the PTO of the receipt of applicants' papers filed under Section 119 is noted.

No rejections have been imposed on the basis of 35 USC 112. Accordingly, applicants understand that applicants' original claims are deemed by the PTO to be in full conformance with 35 USC 112, and applicants are proceeding in reliance thereof.

Claims 1-6 and 9-16 have been rejected under Section 102 as anticipated by Tsukamoto USP 5,986,389 ("Tsukamoto"). This rejection is respectfully traversed.

As regards the point raised in the rejection about process steps, applicants respectfully note that in their previously pending main claims their product was characterized by the process by which it was made, claims of this type being conventionally referred to as "product-by-process" claims,

such claims being a fully acceptable claim format. Applicants further note in this regard that, as stated in *In re Luck et al*, 177 USPQ 523, 525 (CCPA 1973),

...., it is well established that product claims may include process steps to wholly or partially define the claimed product. To the extent these process limitations distinguish the **product** over the prior art, they must be given the same consideration as traditional product characteristics.
[citation omitted; emphasis in the original]

Therefore, applicants maintain that the process recitations in their previous claims should not have been ignored or brushed aside.

Nevertheless, in deference to the examiner's views and to minimize needless argumentation, applicants have now deleted their product-by-process claims and have claimed their novel and unobvious device by structure. Hence, the previously pending product-by-process claims have been deleted and replaced by new claims including new main claims 17, 18, 22, 23, 24 and 25. Applicants claimed device is quite different from that of Tsukamoto and certainly is not anticipated by Fig. 3 or any other part of Tsukamoto.

In particular, Tsukamoto does not disclose (and also does not make obvious) "an insulating layer" located on any substrate, wherein the insulating layer has an open area at the "center portion of the substrate", as well as "a cold

cathode comprising a crystalline thin film formed on the open area of the substrate and having a plurality of fine projection structure parts pointed in substantially the same direction".

Withdrawal of the rejection is in order and is respectfully requested.

Claims 7 and 8 have been rejected under Section 102 as being anticipated by Watanabe et al USP 5,391,956. This rejection is respectfully traversed.

First, claims 7 and 8 are no longer pending. Nevertheless, the remarks made above relative to the rejection based on Tsukamoto apply equally here. Like Tsukamoto, Watanabe does not show (or make obvious) applicants' device including "an insulating layer on said substrate, said insulating layer having an open area at a center portion of the substrate", as well as "a cold cathode comprising a crystalline thin film formed on the open area of the substrate and having a plurality of fine projection structure parts pointed in substantially the same direction".

Withdrawal of the rejection is in order and is respectfully requested.

The prior art documents of record and not relied upon have been noted, along with the implication that such

Appln. No. 10/706,927
Amd. dated September 14, 2004
Reply to Office Action of June 15, 2004

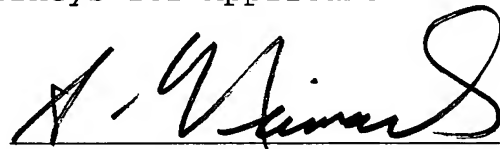
documents are deemed by the PTO to be insufficiently pertinent to warrant their application against any of applicants' claims.

Applicants respectfully request favorable reconsideration, and await the results of a further examination on the merits.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By

A handwritten signature in black ink, appearing to read "S. Neimark", written over a horizontal line.

Sheridan Neimark
Registration No. 20,520

SN:jec
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
G:\BN\K\Kanf\Yamada45A\pto\AMD 14 sept 04.doc